

AMENDED IN ASSEMBLY AUGUST 12, 2010

AMENDED IN ASSEMBLY JUNE 30, 2010

AMENDED IN ASSEMBLY JUNE 14, 2010

AMENDED IN SENATE MAY 12, 2010

AMENDED IN SENATE MARCH 8, 2010

SENATE BILL

No. 909

Introduced by Senator Wright

January 27, 2010

An act to amend Sections 1786.16 and 1786.20 of the Civil Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

SB 909, as amended, Wright. Investigative consumer reporting agencies: disclosures.

Existing law requires a person who procures or causes to be prepared an investigative consumer report for employment purposes other than suspicion of wrongdoing to make specified disclosures to the consumer, including, but not limited to, the name and address of the agency conducting the investigation, the nature and scope of the investigation, and information on consumer inspection.

This bill would additionally require a person who procures or causes to be prepared an investigative consumer report for employment purposes to provide a consumer with the Internet Web site address *or telephone number* of the investigative consumer reporting agency where the consumer may find additional information about the agency's privacy practices.

Existing law requires investigative consumer reporting agencies to establish reasonable procedures to ensure that specified, prohibited items of information concerning consumers are not part of the reports they furnish. Existing law generally provides that an investigative consumer reporting agency or user of information that fails to comply with any requirement under these provisions with respect to an investigative consumer report is liable to the consumer who is the subject of the report for the sum of the greater of actual damages or \$10,000, the costs of the action, reasonable attorney's fees, and, in certain cases, punitive damages, as specified.

This bill would additionally require an investigative consumer reporting agency to conspicuously post on its primary Internet Web site information describing its privacy practices with respect to its preparation and processing of investigative consumer reports, *or, if it does not have an Internet Web site, mail a written copy of the privacy statement to consumers upon request*. The bill would provide that an investigative consumer reporting agency is liable to a consumer who is harmed by any unauthorized access of the consumer's personally identifiable information, act, or omission that occurs outside the United States or its territories, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1786.16 of the Civil Code is amended
2 to read:
3 1786.16. (a) Any person described in subdivision (d) of Section
4 1786.12 shall not procure or cause to be prepared an investigative
5 consumer report unless the following applicable conditions are
6 met:
7 (1) If an investigative consumer report is sought in connection
8 with the underwriting of insurance, it shall be clearly and accurately
9 disclosed in writing at the time the application form, medical form,
10 binder, or similar document is signed by the consumer that an
11 investigative consumer report regarding the consumer's character,
12 general reputation, personal characteristics, and mode of living
13 may be made. If no signed application form, medical form, binder,
14 or similar document is involved in the underwriting transaction,
15 the disclosure shall be made to the consumer in writing and mailed

1 or otherwise delivered to the consumer not later than three days
2 after the report was first requested. The disclosure shall include
3 the name and address of any investigative consumer reporting
4 agency conducting an investigation, plus the nature and scope of
5 the investigation requested, and a summary of the provisions of
6 Section 1786.22.

7 (2) If, at any time, an investigative consumer report is sought
8 for employment purposes other than suspicion of wrongdoing or
9 misconduct by the subject of the investigation, the person seeking
10 the investigative consumer report may procure the report, or cause
11 the report to be made, only if all of the following apply:

12 (A) The person procuring or causing the report to be made has
13 a permissible purpose, as defined in Section 1786.12.

14 (B) The person procuring or causing the report to be made
15 provides a clear and conspicuous disclosure in writing to the
16 consumer at any time before the report is procured or caused to
17 be made in a document that consists solely of the disclosure, that:

18 (i) An investigative consumer report may be obtained.

19 (ii) The permissible purpose of the report is identified.

20 (iii) The disclosure may include information on the consumer's
21 character, general reputation, personal characteristics, and mode
22 of living.

23 (iv) Identifies the name, address, and telephone number of the
24 investigative consumer reporting agency conducting the
25 investigation.

26 (v) Notifies the consumer in writing of the nature and scope of
27 the investigation requested, including a summary of the provisions
28 of Section 1786.22.

29 (vi) Notifies the consumer of the Internet Web site address of
30 the investigative consumer reporting agency; identified in clause
31 (iv), *or, if the agency has no Internet Web site address, the*
32 *telephone number of the agency*, where the consumer may find
33 information about the investigative reporting agency's privacy
34 practices, including whether the consumer's personal information
35 will be sent outside the United States or its territories and
36 ~~compliance~~ *information that complies* with subdivision (d) of
37 Section 1786.20. This clause shall become operative on January
38 1, 2012.

39 (C) The consumer has authorized in writing the procurement
40 of the report.

(3) If an investigative consumer report is sought in connection with the hiring of a dwelling unit, as defined in subdivision (c) of Section 1940, the person procuring or causing the request to be made shall, not later than three days after the date on which the report was first requested, notify the consumer in writing that an investigative consumer report will be made regarding the consumer's character, general reputation, personal characteristics, and mode of living. The notification shall also include the name and address of the investigative consumer reporting agency that will prepare the report and a summary of the provisions of Section 1786.22.

(4) The person procuring or causing the request to be made shall certify to the investigative consumer reporting agency that the person has made the applicable disclosures to the consumer required by this subdivision and that the person will comply with subdivision (b).

(5) The person procuring the report or causing it to be prepared agrees to provide a copy of the report to the subject of the investigation, as provided in subdivision (b).

(b) Any person described in subdivision (d) of Section 1786.12 who requests an investigative consumer report, in accordance with subdivision (a) regarding that consumer, shall do the following:

(1) Provide the consumer a means by which the consumer may indicate on a written form, by means of a box to check, that the consumer wishes to receive a copy of any report that is prepared. If the consumer wishes to receive a copy of the report, the recipient of the report shall send a copy of the report to the consumer within three business days of the date that the report is provided to the recipient, who may contract with any other entity to send a copy to the consumer. The notice to request the report may be contained on either the disclosure form, as required by subdivision (a), or a separate consent form. The copy of the report shall contain the name, address, and telephone number of the person who issued the report and how to contact them.

(2) Comply with Section 1786.40, if the taking of adverse action is a consideration.

(c) Subdivisions (a) and (b) do not apply to an investigative consumer report procured or caused to be prepared by an employer, if the report is sought for employment purposes due to suspicion

1 held by an employer of wrongdoing or misconduct by the subject
2 of the investigation.

3 (d) Those persons described in subdivision (d) of Section
4 1786.12 constitute the sole and exclusive class of persons who
5 may cause an investigative consumer report to be prepared.

6 SEC. 2. Section 1786.20 of the Civil Code is amended to read:

7 1786.20. (a) An investigative consumer reporting agency shall
8 maintain reasonable procedures designed to avoid violations of
9 Section 1786.18 and to limit furnishing of investigative consumer
10 reports for the purposes listed under Section 1786.12. These
11 procedures shall require that prospective users of the information
12 identify themselves, certify the purposes for which the information
13 is sought and that the information will be used for no other
14 purposes, and make the certifications described in paragraph (4)
15 of subdivision (a) of Section 1786.16. From the effective date of
16 this title, the investigative consumer reporting agency shall keep
17 a record of the purposes for which information is sought, as stated
18 by the user. The investigative consumer reporting agency may
19 assume that the purpose for which a user seeks information remains
20 the same as that which a user has previously stated. The
21 investigative consumer reporting agency shall inform the user that
22 the user is obligated to notify the agency of any change in the
23 purpose for which information will be used. An investigative
24 consumer reporting agency shall make a reasonable effort to verify
25 the identity of a new prospective user and the uses certified by the
26 prospective user prior to furnishing the user any investigative
27 consumer reports. An investigative consumer reporting agency
28 may not furnish an investigative consumer report to a person unless
29 it has a written agreement that the investigative consumer reports
30 will be used by that person only for purposes listed in Section
31 1786.12.

32 (b) Whenever an investigative consumer reporting agency
33 prepares an investigative consumer report, it shall follow
34 reasonable procedures to assure maximum possible accuracy of
35 the information concerning the individual about whom the report
36 relates. An investigative consumer reporting agency shall retain
37 the investigative consumer report for two years after the report is
38 provided.

39 (c) An investigative consumer reporting agency may not make
40 an inquiry for the purpose of preparing an investigative consumer

1 report on a consumer for employment purposes if the making of
2 the inquiry by an employer or prospective employer of the
3 consumer would violate applicable federal or state equal
4 employment opportunity law or regulation.

5 (d) (1) An investigative consumer reporting agency doing
6 business in this state shall conspicuously post, as defined in
7 subdivision (b) of Section 22577 of the Business and Professions
8 Code, on its primary Internet Web site information describing its
9 privacy practices with respect to its preparation and processing of
10 investigative consumer reports. *If the investigative consumer*
11 *reporting agency does not have an Internet Web site, it shall, upon*
12 *request, mail a written copy of the privacy statement to consumers.*
13 The privacy statement shall conspicuously include, but not be
14 limited to, both of the following:

15 (A) A statement entitled “Personal Information Disclosure:
16 United States or Overseas,” that indicates whether the personal
17 information will be transferred to third parties outside the United
18 States or its territories.

19 (B) A separate section that includes the name, mailing address,
20 e-mail address, and telephone number of the *investigative* consumer
21 reporting agency representatives who can assist a consumer with
22 additional information regarding the *investigative* consumer
23 reporting agency’s privacy practices or policies in the event of a
24 compromise of his or her information.

25 (2) For purposes of this subdivision, “third party” shall include,
26 but not be limited to, a contractor, foreign affiliate, wholly owned
27 entity, or an employee of the investigative consumer reporting
28 agency.

29 (e) An investigative consumer reporting agency shall be liable
30 to a consumer who is the subject of a report if the consumer is
31 harmed by any unauthorized access of the consumer’s personally
32 identifiable information, act, or omission that occurs outside the
33 United States or its territories as a result of the investigative
34 consumer reporting agency negligently preparing or processing
35 an investigative consumer report, or portion thereof, outside of the
36 United States or its territories. Liability shall be in an amount equal
37 to the sum of (1) any actual damages sustained by the consumer
38 as a result of the unauthorized access, and (2) in the case of any
39 successful action to enforce any liability under this section, the

- 1 costs of the action together with reasonable attorney's fees, as
- 2 determined by the court.

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